THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.22196 of 2006

30.10.2006

Between:

Mir Shabbir Ali, S/o.Late Mir Asghar Ali

... Petitioner

AND

The A.P.State Wakf Board, represented by its
Chief Executive Officer, Haj House, Nampally, Hyderabad
And others

... Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.22196 of 2006

ORDER:

This writ petition is filed challenging the order dated 26.8.2006 passed by the first respondent appointing an Enquiry Officer to conduct enquiry into rival claims of Muthawalliship of Ashoor Khana Asthane Asghari, a registered wakf in Hyderabad city. The petitioner seeks a writ of Mandamus declaring the impugned order appointing Enquiry Officer as one without jurisdiction under the provisions of the Wakf Act, 1995 (the Act, for brevity).

The petitioner and the third respondent are sons of Mir Asghar Ali. Their father was Muthawalli of Ashoor Khana Asthane Asghari. After his death, there was a dispute among the brothers for Muthawalliship. The petitioner herein claims that he is acting as Muthawalli. It appears that both of them made representations to the A.P.Wakf Board seeking appointment as Muthawalli. The petitioner filed W.P.No.17312 of 2006 apprehending the appointment of third respondent as Muthawalli even without considering petitioner's representation dated 14.2.2005. By order dated 23.8.2006, this Court disposed of the W.P.No.17312 of 2006 at the admission stage, recording the submission of the Standing Counsel for Wakf Board that an enquiry into the rival claims would be conducted. The petitioner then approached the first respondent for a copy of the application

made by the third respondent. The petitioner was asked to submit legal heir certificate. In the mean while, the impugned order was passed appointing Enquiry Officer. The petitioner apprehends that the first respondent is predetermined to hold a formal enquiry. Hence, the present writ petition.

Learned Counsel for the petitioner strenuously submits that succession to Muthawalliship in a situation of rival claims between the legal heirs is beyond any enquiry by the Wakf Board. Succession to the incorporeal right as Muthawalli of Wakf is a matter which has to be decided by the civil court and, therefore, the enquiry ordered by the Wakf Board is illegal. He submits that the enquiry ordered under Sections 70 and 71 of the Act cannot decide the disputed questions of succession to Muthawalliship. Learned Counsel placed reliance on **Wakf Board, Hyderabad v Parvathi Bai**[1] and **Adam Aboobacker Sair v Kerala Wakf Board**[2].

Opposing the writ petition, learned Standing Counsel for Wakf Board submits that Sections 70 and 71 of the Act read with Rule 24 of A.P. Wakf Board Rules, 2000 (the Rules, for brevity), amply authorise and vest power in the Wakf Board to conduct enquiry and the same cannot be faulted. He also placed reliance on Section 32 of the Act to refute petitioner's contention. He also brought to the notice of this Court the order passed by this Court in W.P.No.11117 of 2006 dated 08.6.2006.

The material placed by the petitioner and the orders passed by this Court in W.P.No.11117 of 2006 and W.P.No.17312 of 2006 conclusively show the following background for this case. After death of Mir Asghar Ali while holding the office of Muthawalli of Ashoor Khana Asthane Asghari, the Wakf Board issued a notification dated 20.5.2006 calling for applications for appointment as Muthawalli and for managing committee. Prior to that, the third respondent made application on 13.1.2006. He also filed W.P.No.11117 of 2006 apprehending non-consideration of his representation for Muthawalliship. This Court disposed of W.P.No.11117 of 2006 directing the Wakf Board to consider the representation of third respondent herein and others and pass appropriate orders. Thereafter the petitioner also filed W.P.No.17312 of 2006, which was also disposed of with similar observations. The impugned order was issued by the Wakf Board by referring to the order in W.P.No.11117 of

2006 appointing Enquiry Officer to look into the rival claims. Whether such enquiry can be made under the provisions of the Act?

Section 32 of the Act enumerates powers and functions of the Wakf Board. Sections 32(1) and 32(2)(c), (g), (k), (n) and (o) of the Act read as under.

> **32. Powers and functions of the Board:--**
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> (1) Subject to any rules that may be made under this Act, the general superintendence of all wakfs in a State shall vest in the Board established or the State; and it shall be the duty of the Board so to exercise its powers under this Act as to ensure that the wakfs under its superintendence are properly maintained, controlled and administered and the income thereof is duly applied to the objects and for the purposes for which such wakfs were created or intended:
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> Provided that in exercising its powers under this Act in respect of any wakf, the Board shall act in conformity with the directions of the wakf the purposes of the wakf and any usage or custom of the wakf sanctioned by the school of Muslim law to which the wakf belongs.
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> **Explanation:--** For the removal of doubts, it is hereby declared that in this sub-section, "wakf" includes a wakf in relation to which any scheme has been made by any court of law, whether before or after the commencement of this Act.
>
> (2) Without prejudice to the generality of the foregoing power, the functions of the Board shall be –
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> (c) to give directions for the administration of wakfs;
>
> (g) to appoint and remove mutawallis in accordance with the provisions of this Act.
>
> (k) to administer the Wakf Fund;
>
> (n) to investigate and determine the nature and extent of wakf and wakf property, and to cause, whenever necessary, a survey of such wakf property;
>
> (o) generally do all such acts as may be necessary for the control, maintenance and administration of wakfs.

A plain reading of the above provisions would show that adequate powers are vested in the Wakf Board in the matter of administration of the Wakfs and in the matter of determination of the nature and extent of the Wakfs as well as appointment and removal of Muthawallis. The submission of the learned Counsel for the petitioner that the power under Section 63 of the Act is available only when there is a vacancy in the office of Muthawalli of Wakf and there is a dispute regarding appointment of anybody, the Board can appoint anybody as

Muthawalli, therefore, cannot be accepted. It would be altogether different situation if all the legal heirs of a Muthawalli approach the Wakf Board for appointing any one of them as successor of the earlier Muthawalli. Whatever be the situation, necessarily the Wakf Board has to appoint Muthawalli and under Section 42 of the Act, the change in the management of registered Wakf due to the death or retirement or removal of Muthawalli, the incoming Muthawalli has to be notified the same to the Wakf Board. The submissions of the learned Counsel, therefore, cannot be accepted. The two decisions relied on by the learned Counsel are not exactly on the point involved in this case.

In this case, the dispute is between the third respondent and the petitioner, who are sons of late Mir Asghar Ali. Therefore, it would certainly be a matter falling under Section 32(2)(g) read with 32(2)(n) of the Act and the enquiry cannot be faulted. If the Enquiry Officer adopts an unfair method in conducting enquiry, it would always be open for the aggrieved to agitate the matter before the Wakf Board. On the ground that a person was not furnished the required documents, the very appointment of enquiry cannot be invalidated on the ground of want of jurisdiction.

The writ petition, with the above observations, is accordingly disposed of. No costs.

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October 30, 2006 (**V.V.S.RAO,J**)
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[1] AIR 1972 AP 333

[2] AIR 1982 Kerala 322